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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,542	12/30/2003	Rickey L. Fandel	70920-002	8565
29493	7590	10/23/2006	EXAMINER	
HUSCH & EPPENBERGER, LLC 190 CARONDELET PLAZA SUITE 600 ST. LOUIS, MO 63105-3441			GILBERT, WILLIAM V	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/748,542	FANDEL, RICKEY L.	
	<b>Examiner</b>	<b>Art Unit</b>	
	William V. Gilbert	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/30/03</u> .  | 6) <input type="checkbox"/> Other: _____                          |

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#### **DETAILED ACTION**

This is a First Action on the Merits. Claims 1-20 are pending and examined as set forth below.

#### ***Election/Restrictions***

1. Applicant's election with traverse of Species I, Figures 1-4 in the reply filed on 17 August 2006 is acknowledged. The traversal is on the ground(s) that all the claims read on the elected species (page 2, line 2). This is not found persuasive because all claims do not read on the elected species.

Applicant claims in Claims 5 and 16 a starter strip, which is not shown with regard to Species I. As a result Claims 5 and 16 are withdrawn from consideration and Claims 1-4, 6-15 and 17-20 will be examined.

The requirement is still deemed proper and is therefore made FINAL.

#### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the mounting face (Claim 1, line 3; Claim 13, line 3), must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

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Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1, 3, 4, 6-13, 15, 17-19** are rejected under 35 U.S.C. 102(b) as being anticipated by Voegeli (U.S. Patent No. 3,107,454).

Regarding Claims 1 and 13, Voegeli discloses a flashing receiver (Figure 1, element 13) of a thin gauge material having a first leg (Figure 2, area proximate element 16) and a second leg (17), a portion of the second leg at an angle to the first leg (Figure 1, per Claim 13), a plurality of nail slots (Figure 1, element 12, per Claim 13) extending through the first and second legs, the first leg having a top and bottom forming a mounting face (area proximate 16) the second leg (17) having first and second sides, and an intermediate member (Figure 1, area proximate 20) offsetting the first and second legs, and the intermediate member is resilient (an inherent feature, per Claim 13). Per Claims 1 and 13, only the flashing receiver is claimed. The phrases "associated with a wall covering" and

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"associated with a removable flashing" are statements of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding Claims 3 and 15, the material is metal.

Regarding Claim 4, Voegeli discloses a plurality of nail openings (12) extending through at least the first leg (Figure 1) and proximate to the top.

Regarding Claims 6, the material of the intermediate member (20) of the prior art is rigid.

Regarding Claim 7, the material of the intermediate member (20) of the prior art is resilient.

Regarding Claims 8 and 17, a portion of the second leg (17) is at an angle to the first leg (area proximate 16). See Figure 2 generally.

Regarding Claim 9, an intermediate portion (area proximate Figure 2, element 20) is at an angle to the first and second legs (16 and 17, respectively).

Regarding Claims 10, 12 and 18, the second leg (17) includes a "J-shaped" channel (24). In particular to Claim 12, only the flashing receiver has been claimed, not the flashing.

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The phrase "overlaps...flashing" is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding Claims 11 and 19, the "J-shaped" channel (24) is at a height above the bottom (Figure 1).

**Claim 20** is rejected under 35 U.S.C. 102(e) as being anticipated by Kintop (U.S. Patent No. 6,578,322 B2).

Regarding Claim 20, Kintop discloses a method of using an under siding flashing receiver (Figure 1, element 16a, 80) comprising locating the receiver along a lower board of a wall adjacent to the roof (W), securing the flashing receiver to the wall (26), inserting flashing into the flashing receiver (see Figure 1, element 30 proximate element "18"), partially covering the roof (R) and the flashing with the roofing material (Figure 1, element 30 above element "R") and connecting an exterior wall covering (14) to the flashing receiver.

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***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this

Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

**Claims 2 and 14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Voegeli in view of Gembala (U.S. Publication 2002/0178671).

Regarding Claims 2 and 14, which depend from Claims 1 and 13, respectively, Voegeli discloses the claimed invention except that the receiver is made of plastic. Gembala discloses a flashing receiver (16) that can be made of a number of materials, including plastic (page 2, paragraph 0032). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the flashing receiver in Voegeli out of plastic as disclosed in Gembala because plastic is functionally equivalent to metal and would perform equally as well. Further, the use of plastic material as in Gembala would not corrode (see Page2, paragraph 0032).



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***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Weckerly (U.S. Patent No. 3,256,650), Golba (U.S. Patent No. 5,519,969), Gembala (U.S. Publication 2002/0178671).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on 571.272.6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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19 Oct 2006

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